

1 Kevin Haverty, Esq., *pro hac vice*
2 WILLIAMS CUKER BEREZOF SKY, LLC
3 210 Lake Drive East, Suite 101
Cherry Hill, NJ 08002
Telephone: (856) 667-0500

4 *Attorneys for Plaintiffs*

5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11
12 STEPHEN WENDELL AND LISA WENDELL,
for themselves and as successors in interest to
13 MAXX WENDELL, DECEASED,

14 Plaintiffs,

15 v.

16 JOHNSON & JOHNSON; CENTOCOR, INC.;
ABBOTT LABORATORIES; SMITHKLINE
17 BEECHAM d/b/a GLAXOSMITHKLINE; TEVA
PHARMACEUTICALS USA; GATE
18 PHARMACEUTICALS, a division of TEVA
PHARMACEUTICALS USA; PAR
19 PHARMACEUTICAL, INC.;

20 Defendants.

21 CASE NO. 4:09-CV-04124-CW

22 **STIPULATED REQUEST FOR ORDER**
EXTENDING TIME AND ORDER

23 Removal Filed: September 4, 2009

24
25
26
27
28

STIPULATION

Pursuant to Rule 6-2(a), the parties jointly request that the deadlines be extended as set forth herein.

On September 4, 2009, this case was removed to the United States District Court for the Northern District of California. A series of motions resolved multiple pleadings issues at the outset of this litigation. On June 10, 2010 plaintiffs filed the operative amended Complaint and the defendants all filed Answers on July 1, 2010. Discovery beyond initial disclosures began once pleadings issues were resolved.

In the interim, the court, on June 3, 2010, entered a Case Management Order which provided, among other things, that fact discovery was to end on February 2, 2011.

On July 13, 2010, plaintiffs served interrogatories and requests for production of documents on all defendants. Defendants served responses to those discovery requests variously on August 25, 2010 (Centocor), September 24, 2010 (Par Pharmaceutical and Teva), October 4, 2010 (Abbott Laboratories) and November 15, 2010 (GlaxoSmithKline). Defendants indicated that responsive documents would be provided or made available for inspection and copying subject to the entry of a protective order.

On July 28, 2010, plaintiffs' counsel sent an email to counsel for defendant Abbott Laboratories asking her to identify 30(b)(6) witnesses for deposition, Exhibit 1, to which she responded the next day that Abbott would endeavor to identify the appropriate witnesses. Exhibit 2. In Abbott's responses to plaintiffs' discovery requests, various witnesses with knowledge are identified but Plaintiffs state that their depositions cannot be properly conducted until the underlying documents have been reviewed.

On or about December 20, 2010, the Court granted the parties' request to extend the deadline to conduct mediation to June 29, 2011. On or about February 3, 2011, the Court granted the parties' request to extend the discovery end date until June 30, 2011, and ordered that Plaintiffs designate testifying experts and provide related reports by August 12, 2011, Defendants designate testifying experts and provide related reports by October 30, 2012 [sic], the parties complete expert discovery

1 on or before December 14, 2011, and dispositive motions be heard on or before (and a case
 2 management conference would be set for) January 26, 2012. The trial date was not continued.

3 A protective order was ultimately entered by the Court on April 19, 2011. Thereafter,
 4 Defendants collectively produced millions of pages of documents on disk drives to Plaintiffs. These
 5 productions occurred variously on April 19 (Centocor) and May 11, 18 and 24, 2011 (Abbott).
 6 Defendants GlaxoSmithKline, Teva and Par have offered to make documents available for
 7 inspection and copying in response to Plaintiffs' requests. Defendant Centocor has offered to make
 8 available for inspection and copying its hard-copy production.

9 The parties have completed key depositions in this litigation, such as the deposition of Maxx
 10 Wendell's prescribing physician on April 11, 2011, and of Plaintiffs and another family member on
 11 June 14, 2011. On several occasions, the last of which occurred on June 16, 2011, the parties
 12 conferred about issues related to timing of mediation, potential dispositive motion practice, and
 13 further discovery.

14 The parties have agreed to mediate this case with Honorable Rebecca Westerfield. The
 15 parties are attempting to identify a mutually agreeable date in August but will, in any event, schedule
 16 the mediation to occur on or before September 15, 2011. The parties believe that a stay of
 17 discovery until after the mediation or, if the mediation is unsuccessful, until after the ruling on the
 18 motions for summary judgment discussed below, will allow the parties to conserve resources for
 19 settlement, conserve judicial resources, and help resolve the litigation.

20 Defendants plan to file motions for summary judgment based on the learned intermediary
 21 doctrine. Defendants do not need additional discovery to file such motions. Plaintiffs have
 22 conducted all discovery needed to oppose such motions and do not plan to oppose the motion on the
 23 grounds that further discovery is necessary.

24 Should those motions and the mediation be unsuccessful, some additional fact discovery
 25 would need to be conducted by the parties. Plaintiffs would need to conduct additional discovery
 26 bearing on the issues of the adequacy of the warning labels which will not only involve reviewing
 27 and selecting pertinent documents from the electronic discovery provided by Defendants but also

conduct depositions pursuant to *Fed. R. Civ. P.* 30(b)(6). If they have not already done so, Plaintiffs will supplement their responses to Defendants' written discovery requests by providing (1) a list of the categories of damages they seek and amounts for each and (2) certain responsive documents Plaintiffs testified were available but which have not yet been produced to Defendants. Further fact discovery to be conducted by Defendants includes taking additional depositions of at least two of Maxx Wendell's treating oncologists¹ and any discovery arising from Plaintiffs' responses to written discovery previously propounded by Defendants.

THE PARTIES HEREBY STIPULATE AS FOLLOWS:

1. The parties hereto request that the June 29, 2011 deadline for the parties to conduct private mediation be continued to September 15, 2011.

2. The parties request that all other deadlines be vacated.

3. The parties request that discovery be stayed until after the mediation or ruling on defendants' motions for summary judgment, whichever comes later; at that time the parties will meet and confer to determine a proposed schedule for remaining fact discovery listed above, expert discovery, other pre-trial deadlines, and a new trial date.

4. The parties will file a proposed scheduling order within two weeks of the mediation (in the event it is unsuccessful) or ruling on defendants' motions for summary judgment, whichever comes later.

11

11

11

11

11

11

11

11

¹ These depositions were previously scheduled for June 24, 2011. The parties would like to continue these depositions to after the mediation to avoid incurring potentially unnecessary costs.

1 5. DECLARATION PURSUANT TO L.R. 6-2(a): The parties declare that (1) the
2 reason for the requested enlargement of time is to allow the parties to engage in mediation, potential
3 early dispositive motion practice and additional discovery should mediation or motion practice fail
4 to dispose of the case; (2) as set forth above, the parties anticipate that this modification of the
5 discovery end date will affect other deadlines including the April 2012 trial date.

6 DATED: June 22, 2011

7 _____
8 /s/ Kevin Haverty
9 Kevin Haverty (*pro hac vice*)
10 WILLIAMS CUKER BEREZOFSKY,
11 LLC
12 Woodland Falls Corporate Park
13 210 Lake Drive East, Suite 101
14 Cherry Hill, NJ 08002
15 *Counsel for Plaintiffs*

16 _____
17 /s/ Michelle A. Childers
18 Michelle A. Childers
19 DRINKER BIDDLE & REATH LLP
20 50 Freemont Street, 30th Fl.
21 San Francisco, CA 94105
22 *Counsel for Centocor Ortho Biotech, Inc.*
23 *and Johnson & Johnson*

24 _____
25 /s/ William A. Hanssen
26 William A. Hanssen
27 DRINKER BIDDLE & REATH LLP
28 333 South Grand Ave., Ste. 1700
29 Los Angeles, CA 90071-1504
30 *Counsel for SmithKline Beecham*
31 *Corporation*
32 *d/b/a GlaxoSmithKline*

33 PURSUANT TO STIPULATION, IT IS SO ORDERED. Defendants shall notice their motion on
34 the learned intermediary defense for not later than Jan. 26, 2012, and a case management conference
35 will be held on that date at 2 pm.

36 Dated: June 23, 2011

37 _____
38 /s/ Andrew P. Bautista
39 Andrew P. Bautista (*pro hac vice*)
40 KIRKLAND & ELLIS LLP
41 300 North LaSalle
42 Chicago, Illinois 60654
43 *Counsel for Abbott Laboratories*

44 _____
45 /s/ Prentiss W. Hallenbeck, Jr.
46 Prentiss W. Hallenbeck, Jr. (*pro hac vice*)
47 ULMER & BERNE LLP
48 600 Vine Street, Suite 2800
49 Cincinnati, OH 45202
50 *Counsel for Teva Pharmaceuticals*
51 *USA, Inc.*

52 _____
53 /s/ Prentiss W. Hallenbeck, Jr.
54 Prentiss W. Hallenbeck, Jr. (*pro hac vice*)
55 ULMER & BERNE LLP
56 600 Vine Street, Suite 2800
57 Cincinnati, OH 45202
58 *Counsel for Par Pharmaceutical, Inc.*

59 _____
60 
61 CLAUDIA WILKEN
62 United States District Judge

1 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

2 I, Kevin Haverty, am the ECF user whose ID and password are being used to file this
3 STIPULATED REQUEST FOR ORDER EXTENDING TIME AND [PROPOSED] ORDER. In
4 compliance with General Order 45, X.B., I hereby attest that the following attorneys have concurred
5 in this filing: Andrew P. Bautista, counsel for Abbott Laboratories; Michelle A. Childers, counsel
6 for Centocor Ortho Biotech, Inc., and Johnson & Johnson; Prentiss W. Hallenbeck, Jr., counsel for
7 Teva Pharmaceuticals USA, Inc., and Par Pharmaceutical, Inc.; William A. Hanssen, counsel for
8 SmithKline Beecham Corporation.

9 _____*/s/ Kevin Haverty*_____

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 22, 2011, I electronically filed the foregoing STIPULATED REQUEST FOR ORDER EXTENDING TIME AND [PROPOSED] ORDER with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses registered, as denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed a true and correct copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants listed below:

John D. Winter
Patterson, Belknap, Webb & Tyler LLP
1133 Avenue Of The Americas
New York, New York 10036-6710

Jeffrey F. Peck
Ulmer & Berne LLP
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 22, 2011

By: s/ *Kevin Haverty*

Kevin Haverty, pro hac vice
WILLIAMS CUKER BEREZOFSKY, LLC
Khaverty@wcblegal.com
210 Lake Drive East, Suite 101
Cherry Hill, New Jersey 08002
Telephone: (856) 667-0500
Fax: (856) 667-5133